

STATEMENT OF EMERGENCY
902 KAR 2:240E

This emergency administrative regulation is being promulgated to establish the Cabinet for Health and Family Services assists and supports all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities with COVID-19 test acquisition, and establish a statewide distribution plan. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to protect public health, safety, and welfare, and KRS 13A.190(1)(a)3. as directed by 2021 Extra. Sess. Ky. Acts Ch. 5. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(New Emergency Administrative Regulation)

902 KAR 2:240E. COVID-19 test acquisition and distribution.

EFFECTIVE: October 1, 2021

RELATES TO: KRS 194A.050, 211.180

STATUTORY AUTHORITY: 2021 Extra. Sess. Ky. Acts Ch. 5

NECESSITY, FUNCTION, CONFORMITY: 2021 Extra. Sess. Ky. Acts Ch. 5 Section 3 requires the Cabinet for Health and Family Services to assist and support all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring a sufficient number of COVID-19 tests. The cabinet is to develop a plan for the statewide distribution of the COVID-19 tests, and to distribute all COVID-19 tests. 2021 Extra. Sess. Ky. Acts Ch. 5 Section 4 requires the cabinet to promulgate an emergency administrative regulation to implement Section 3. This emergency administrative regulation is in fulfillment of this statutory directive.

Section 1. COVID-19 Tests Acquisition. (1) The Kentucky Department for Public Health (KDPH) shall coordinate testing operations in accordance with federal and state requirements.

(2) Federal and state funding shall be made available to support testing operations including the purchase of testing and laboratory supplies.

(3) Request for COVID-19 testing resources, including personnel, equipment, and supplies, shall be made to the State Emergency Operations Center or the State Health Operation Center.

(4) KDPH shall distribute any COVID-19 test available upon request from all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities.

Section 2. COVID-19 Test Distribution in Support of Vulnerable Populations. (1) In accordance with Ky. Acts Ch. 5 Section 3 the cabinet shall, to the extent supplies and necessary funding is available, and in compliance with existing federal and state statutes and regulations,

obtain and distribute BinaxNOW™ antigen test cards to jails, prisons, homeless shelters, local health departments, and other entities serving vulnerable populations;

(2) A standardized request process describing eligible entities, program requirements, and including a link to an online request survey shall be available at the kycovid19.ky.gov website.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: October 1, 2021 at 10:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new emergency administrative regulation establishes the process for COVID-19 test acquisition and distribution.

(b) The necessity of this administrative regulation: 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 3 requires the cabinet to assist and support hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring sufficient COVID-19 tests, develop a plan for statewide distribution of the COVID-19 tests, and to distribute all COVID-19 tests.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 4 requires the cabinet to promulgate an emergency administrative regulation to implement the requirements of 2021 Extra. Sess. Ky. Acts Ch. 5 Section 3. This new emergency administrative regulation conforms to the requirements of 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new emergency administrative regulation will ensure the cabinet is available to assist and support hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring sufficient COVID-19

tests, and ensure the cabinet distributes all COVID-19 tests according to a statewide distribution plan.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new emergency administrative regulation will impact all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities who request assistance and support to acquire sufficient COVID-19 tests.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will need to request sufficient COVID-19 tests.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will be able to provide COVID-19 tests when necessary.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The impact on the budget of the cabinet is unknown. The cabinet will incur costs associated with the distribution of COVID-19 tests.

(b) On a continuing basis: This new emergency administrative regulation will not impact the budget of the cabinet on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding necessary to implement this emergency administrative regulation will be the American Rescue Plan Act as authorized by 2021 Extra. Sess. Ky. Acts Ch. 2.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement this new emergency administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This new emergency administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will be impacted equally by this new emergency administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This new emergency administrative regulation will impact the Division of Epidemiology and Health Planning in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2021 Extra. Sess. Ky. Acts Ch. 5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new emergency administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new emergency administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? There is no cost associated with this new emergency administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with the new emergency administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: